

1 WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

2 By: Peter Muthig
3 Deputy County Attorney
State Bar No. 018526
4 MCAO Firm No. 00032000
E-mail: muthigk@mcao.maricopa.gov

5 CIVIL SERVICES DIVISION
Security Center Building
222 North Central Avenue, Suite 1100
6 Phoenix, Arizona 85004-2206
Telephone (602) 506-1735

7 *Attorneys for Maricopa County Treasurer*

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF NEW YORK**

11 In Re:
12 Sears Holdings Corporation, et al.,
13 Debtors.

Chapter 11

Case No. 18-23538-RDD

(Jointly Administered)

Hearing Date: November 15, 2018 at 10:00 a.m.
Objection Deadline: November 8, 2018 by 4:00 p.m.

Relates to Docket Nos. 23 and 337

16
17 **OBJECTION TO MOTION FOR APPROVAL OF (I) PROCEDURES
FOR STORE CLOSING SALES AND (II) ASSUMPTION OF
18 LIQUIDATION CONSULTING AGREEMENT**

19 Maricopa County Treasurer ("MCT"), by and through its undersigned counsel,
20 hereby submits this objection (the "Objection") to Debtors' *Motion for Approval of (I)*
21 *Procedures for Store Closing Sales and (II) Assumption of Liquidation Consulting*
22 *Agreement* [Docket No. 23] (the "Motion"). In support of the Objection, MCT respectfully
23 represents as follows:
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PRELIMINARY STATEMENT

MCT provides notice that it claims perfected statutory liens, in accordance with A.R.S. §§ 42-17153 and 42-19106, on all of the Debtors' real and personal property located in Maricopa County. MCT objects to the Motion as it fails to provide for payment of the 2018 personal property taxes or retention of the tax liens.

BACKGROUND

Personal Property Taxes:

MCT will file a secured Proof of Claim for the prepetition personal property taxes in early November. The current estimated amount due for prepetition personal property taxes is \$13,328.64; however, that amount may increase upon full review of the tax records. Interest accrues at the statutory rate of 16% per annum until paid in full, if the taxes are not timely paid. See 11 U.S.C. § 511 and A.R.S. § 42-18053. The tax liens attached on January 1 of the respective tax year. A.R.S. § 42-17153. Further, the tax liens are "prior and superior to any other liens of every kind and description regardless of when another lien attached" and the liens "shall not be discharged until the taxes are paid or the title to the property vests in a purchaser of the property for taxes." A.R.S. § 42-19106¹.

Property Address	Parcel	Tax Year	Tax Due As Of 11/2/18
10001 N. Metro Pkwy W, Phoenix, AZ	900-13-439	Full 2018	\$127.14
10001 N. Metro Pkwy W, Phoenix, AZ	900-31-151	2nd Half 2018	\$1,317.95
10001 N. Metro Pkwy W, Phoenix, AZ	990-76-458	2018	\$0.00
7780 Arrowhead Mall, Glendale, AZ	947-97-650	2nd Half 2018	\$1,662.04
7780 Arrowhead Mall, Glendale, AZ	948-30-988	Full 2018	\$104.33
Desert Sky Mall, Suite C03, Phoenix, AZ	900-97-199	2nd Half 2018	\$2,879.16
Desert Sky Mall, Suite C03, Phoenix, AZ	949-44-906	Full 2018	\$138.68
Paradise Valley Mall, Suite 4604, Phoenix,	924-31-732	2nd Half 2018	\$1,302.87

¹ See also A.R.S. § 42-17153.

1	AZ			
	4604 E. Cactus Road, Phoenix, AZ	924-38-770	Full 2018	\$90.70
2	952 E. Baseline Road, Suite 111, Mesa, AZ	924-31-741	2018	\$0.00
3	6515 E. Southern Avenue, Mesa, AZ (Superstition Springs)	928-84-630	2nd Half 2018	\$1,555.46
4	6515 E. Southern Avenue, Mesa, AZ (Superstition Springs)	924-96-380	Full 2018	\$73.76
5	8440 S. Hardy Drive, Tempe, AZ	943-83-840	2018	\$0.00
	8440 S. Hardy Drive, Tempe, AZ	990-76-467	2018	\$0.00
6	Chandler Fashion Center, Chandler, AZ	947-21-473	2018	\$0.00
	Chandler Fashion Center, Chandler, AZ	947-72-516	Full 2018	\$97.72
7	Fiesta Mall, Suite 1425, Mesa, AZ	900-87-693	2nd Half 2018	\$954.43
	4225 W. Indian School Road, Phoenix, AZ	901-70-388	2nd Half 2013	\$1,368.11
8	8701 W. McDowell Road, Tolleson, AZ	915-98-671	Full 2018	\$1,656.29
9				\$13,328.64

OBJECTION

MCT objects to the sale of the furniture, fixtures and equipment ("FF&E"), unless the personal property taxes, including any interest, are to be paid first from the sale proceeds of the FF&E related to the closing store(s) in Maricopa County. The Motion seeks authorization for the Debtors and/or the Liquidation Consultant to either sell the FF&E at each closing location, move the FF&E to another store location, or to abandon the remaining personal property to the Landlord free and clear of liens.

To the extent the FF&E is sold, MCT requests that the personal property taxes on any of the Closing Stores in Maricopa County be paid in full, including interest, first from the sale proceeds. Arizona law provides that "If the tax has not been paid on property sold at judicial sale, or sold by an executor, administrator, guardian or trustee, the person making the sale shall pay the taxes, penalties and costs from the proceeds of the sale." A.R.S. § 42-18059. The county is entitled to have its tax liens on the property paid from the sale of which the funds were derived. *Brans v. City of Dallas, Texas*, 217 F.2d 640, 641 (5th Cir.1954).

1 In addition, to the extent the FF&E is sold, removed, or abandoned, Arizona law
2 provides that "It is unlawful for the owner, a lienholder, a conditional vendor or any other
3 person to knowingly sell or transfer personal property or remove it from its location until
4 the taxes on the property are paid." See A.R.S. § 42-19107. Failure to comply with this
5 law is a Class 1 Misdemeanor.

6 As stated above, the MCT tax liens are prior and superior to all other liens on the
7 property regardless of when another lien attached. This includes, but is not limited to,
8 any liens held by the Landlords. Therefore, the personal property, including the FF&E,
9 cannot be sold or removed unless the taxes and interest are paid in full.

10 Further, the personal property, including the FF&E, cannot be abandoned to the
11 Landlord free and clear of the tax liens. While the Bankruptcy Code allows
12 abandonment of the personal property, it does not allow the Debtors to abandon the
13 personal property, including the FF&E, to the Landlords or any other party free and
14 clear of the tax liens that are prior and superior to all other liens on the property. To the
15 extent the Debtors and/or Liquidation Consultant determine to abandon any personal
16 property, MCT requests that either the taxes and interest for the property at that Closing
17 Store location be paid in full OR that the personal property be abandoned subject to the
18 tax liens.

19 MCT requests that Debtors provide notice to MCT of any abandonment of
20 property including a list and/or description of the property abandoned.

21 WHEREFORE, MCT objects to the Motion and the sale, transfer, removal or
22 abandonment of the FF&E and any other personal property relating to the closing stores
23 in Maricopa County and any other stores that may subsequently be closed or included
24 in this Motion, unless the order provides that (i) the prepetition personal property taxes

1 will be paid in full, including any statutory interest, first from the sale proceeds, and (ii)
2 the tax liens remain attached to the property until the taxes and any interest are paid in
3 full.

4 Dated: November 8, 2018.

5 WILLIAM G. MONTGOMERY
6 MARICOPA COUNTY ATTORNEY

7 /s/ Peter Muthig
8 PETER MUTHIG (AZ State Bar #018526)
9 Deputy County Attorney
10 *Attorney for Maricopa County Treasurer*
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CERTIFICATE OF SERVICE

I, Peter Muthig, hereby certify that, on November 8, 2018, I caused a copy of the foregoing document to be served upon the parties below in the manner indicated.

U.S. MAIL

Judge Robert D. Drain
Chambers
U.S. Bankruptcy Court
S.D. New York
300 Quarropas Street

Paul Schwartzberg
United States Trustee
Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

ELECTRONIC MAIL

Ray C. Schrock
Jacqueline Marcus
Garrett A. Fail
Sunny Singh
Paloma Van Groll
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Email: ray.schrock@weil.com
Email: jacqueline.marcus@weil.com
Email: garrett.fail@weil.com
Email: sunny.singh@weil.com
Email: Paloma.vangroll@weil.com
Attorneys for Debtors

/s/ Peter Muthig
Peter Muthig (AZ Bar No. 018526)